

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

MATRIX ENERGY, LLC
FOR DETERMINATION OF
RETAIL ELECTRIC SUPPLIER

CASE NO. 2003-00228

**POST-HEARING BRIEF OF KENTUCKY POWER COMPANY D/B/A
AMERICAN ELECTRIC POWER**

Kentucky Power Company d/b/a American Electric Power ("Kentucky Power") for its Post-Hearing Brief states:

Introduction

Save for a single, non-relevant exception,¹ the facts of this case are undisputed. Applying the factors listed at KRS 278.017(3)² to these undisputed facts, Kentucky Power is entitled to serve the entire Matrix Mine.

Statement of the Case

This dispute is before the Commission on the June 12, 2003 Application of Matrix Energy, LLC ("Matrix") seeking authority for Kentucky Power to serve the Matrix coal mining facility located astride the boundary between the certified territories of Kentucky Power and Big Sandy Rural Electric Cooperative Corporation ("Big Sandy").

A. The Matrix Mine.

The Matrix Mine is located in southern Johnson and Martin Counties and northern Floyd County, approximately 12 miles northeast of Prestonsburg, 14 miles

¹ Whether Matrix informed Big Sandy at the January, 2002 meeting of its need for temporary electrical service beginning as early as April, 2002.

² These factors are made applicable to this matter by KRS 278.018(1). See also, *Owen County Rural Electric Cooperative Corporation v. Public Service Commission*, Ky. App., 689 S.W.2d 599, 602 (1985).

southeast of Paintsville and 11 miles southwest of Inez. Prefiled Testimony of Delinda K. Borden ("Borden") at 2. Mining will be conducted 400-1000 feet underground within the Alma coal reserves. Prefiled Testimony of Paul Horn (Horn") at 2. The reserves are leased to Czar Coal Corporation ("Czar") and will be mined by Matrix³ *Id.* Other coal seams, located above the Alma seam but within the surface boundaries of the Matrix Mine, previously were mined by entities other than Matrix. Borden at 4.

The boundary line between the certified service territories of Kentucky Power and Big Sandy in the area of the Matrix Mine follows the Johnson-Martin County line. Borden at 2. As a result, while most of the reserves to be mined by Matrix lie within Kentucky Power's certified territory, approximately 25% of the reserves are within the adjacent Big Sandy certified territory. Horn at 3.

B. Operation of the Matrix Mine.

1. Location of Facilities.

The slope entrance to the mine, which will be used for ingress and egress, to remove the coal and to provide electric service to a portion of the mine, along with the ventilation shaft are located in Big Sandy's certified territory. Horn at 4. The initial mine face is located approximately 1000 feet west of the boundary between the Big Sandy-Kentucky Power boundary. Borden at 3. Because of the need to maintain adequate voltage for the underground mining operations, three bore holes located in Kentucky Power's service territory⁴ also will be used to supply electricity to the mine. Horn at 10. In addition, two conveyor belts, stretching 11,734 feet, will be powered by motors

³ Czar and Matrix are commonly owned. Borden at 2.

⁴ Big Sandy does not dispute the need for the boreholes. Big Sandy Response to Kentucky Power Data Request 20(b).

located in Kentucky Power's service territory. Horn at 8-9. A third conveyor belt, 1,316 feet in length, will operate from a motor located in Big Sandy's territory. Horn at 8. The conveyor system, which is expected to be operational 6-12 months after the mine is opened, will transport coal to the Czar preparation plant. *Id.* The plant is located in Kentucky Power's service territory and is served by Kentucky Power. *Id.*

2. Mining Operations.

Assuming mining begins January 1, 2004,⁵ operations in Big Sandy's certified territory will commence January 1 2004 and end September 9, 2011.⁶ During this little more than seven and one half year period, Matrix projects it will recover 6.3 million tons of coal from operations in Big Sandy's certified territory.⁷ Mining within Big Sandy's certified territory typically will be conducted using a single section miner.⁸

Mining in Kentucky Power's certified territory is scheduled to begin January 17, 2004 and continue until October 26, 2014.⁹ Thus, although mining operations in Kentucky Power's service territory commence almost simultaneously with those in Big Sandy's certified territory, the operations in Kentucky Power's territory will continue three years after the end of operations in Big Sandy's territory. See, Transcript of Hearing ("T.H.") at 41-42. Matrix projects that mining operations in Kentucky Power's territory will produce 21.1 million tons of coal,¹⁰ or more than 3 ½ times the amount to

⁵ Matrix used a January 1, 2004 projected date for starting mining operations in its responses to Kentucky Power's Data Requests. See, e.g., Matrix Response to Kentucky Power Data Requests (1)(a), (2)(a). Even if that date slips, the relative length of mining operations in the respective certified territories should remain the same.

⁶ Matrix Response to Kentucky Power Data Requests (1)(a), (2)(a).

⁷ Matrix Response to Kentucky Power Data Requests (1)(e), (2)(e).

⁸ Matrix Response to Kentucky Power Data Requests (1)(c), (2)(c).

⁹ Matrix Response to Kentucky Power Data Requests (1)(b), (2)(b).

¹⁰ Matrix Response to Kentucky Power Data Requests (1)(f), (2)(f).

be produced in Big Sandy's territory. While mining in Kentucky Power's certified territory, Matrix typically will use three continuous miners.¹¹

3. Electrical Usage In Connection With The Matrix Mine.

Equipment used in connection with the mining operations will almost exclusively be electrically powered, including the continuous miners, shuttle cars, roof bolters, feeders, belt drive, and a scoop. Horn at 9. Matrix projects a load of 5-7 MW in connection with its operation of the Matrix Mine. T.H. at 9. Because the primary causes of damage to this equipment are voltage surges and reductions, the mine requires consistent and reliable electrical power. *Id.* To meet this need, Matrix requires 34.5 kV service¹² and a 12.47 kV substation to be constructed at the mine entrance. *Id.*

Energy consumption from mining operations in Kentucky Power's service territory is expected to be three times that from operations in Big Sandy's certified territory. T.H. at 17-18.

C. Existing Electrical Service And Infrastructure In Area Of The Matrix Mine.

1. Big Sandy.

Big Sandy does not appear to have any distribution facilities within the boundaries of the Matrix Mine.¹³ Indeed, according to Mr. Daniel, the terminus of Big Sandy's closest existing distribution line is located approximately 4,000 feet from the

¹¹ Matrix Response to Kentucky Power Data Requests (1)(d), (2)(d).

¹² Big Sandy does not dispute the need for 34.5 kV service. Big Sandy Response to Kentucky Power Data Request (19)(c).

¹³ Big Sandy Response to Kentucky Power Data Request (1)(a); Prefiled Testimony of Arlie Daniel ("Daniel") at 3. The map filed as "Big Sandy 2" in connection with Mr. Daniel's testimony indicates a distribution line near the mine entrance. As became clear in connection with Big Sandy's Response to Kentucky Power's Data Requests and Mr. Daniel's testimony on cross-examination, the line illustrated on the map did not exist on the date of the hearing and does not represent a line Big Sandy proposes to construct in the future. Big Sandy Response to Kentucky Power Data Request (18)(a); (18)(b); T.H. at 174. In fact, the distribution line was removed from service on November 3, 1988. Big Sandy Response to Kentucky Power Data Request (18)(b).

entrance to the Matrix Mine. Daniel at 3. Moreover, in 2001 Big Sandy consented to Kentucky Power providing service to a mine located approximately 6,000 feet east of the Matrix Mine mouth, but outside the boundaries of the Matrix Mine. T.H. at 172-173 As explained by Mr. Daniel, Big Sandy agreed to service by Kentucky Power because:

Q. At that point in time, on December [sic] 6, 2001, it [Big Sandy] was incapable of providing power to Mine No. 2?

A. That's right.

Q. Why was that?

A. We just didn't have the power. The wire size was small and we just didn't have the power to furnish another substation.

T.H. at 173. In fact, Big Sandy concedes that "none of its existing distribution lines in the area of the 'Matrix Mine' provide sufficient capacity to serve the 'Matrix Mine.'" ¹⁴

Big Sandy's closest distribution facilities to the Matrix Mine were constructed approximately in 1955. Daniel at 3.

Big Sandy does not own or control any transmission facilities. ¹⁵ Instead, it receives generation and transmission service from East Kentucky Power Cooperative, Inc. ("EKPC"). The closest EKPC transmission line, the Thelma-Magoffin County line, is a 69 kV line that was constructed in 1990 and is located, at its nearest point, approximately 5 miles from the Matrix Mine entrance. ¹⁶ Big Sandy does not propose to serve the Matrix Mine using the Thelma-Magoffin County line because to do so would duplicate transmission facilities and unnecessarily "burden private land property owners ... to serve only one customer for a period of 8-10 years." Prefiled Testimony of

¹⁴ Big Sandy Response to Kentucky Power Data Request (1)(a).

¹⁵ Big Sandy Response to Kentucky Power Data Request (2)(a).

¹⁶ Big Sandy Response to Kentucky Power Data Request (2)(a), (2)(b).

Gregory L. McKinney ("McKinney") at 4. See also, T.H. at 156-157. Instead, Big Sandy plans to use Kentucky Power's nearby 69 kV transmission line. McKinney at 2.

2. Kentucky Power.¹⁷

Kentucky Power has distribution lines within the boundaries of the Matrix Mine. Prefiled Testimony of Errol K. Wagner ("Wagner") at 2-3. They include a single phase 7.2 kV distribution line that extends along KY 194 for approximately 3.1 miles to Thomas and serves residential and small commercial customers.¹⁸ The company serves six customers within the boundaries of the Matrix Mine from these facilities, which were constructed in late 1950 or soon thereafter.¹⁹ Kentucky Power also has 12.47 kV distribution facilities south of Matrix Mine. *Id.* Approximately 2.5-3 miles north of the Matrix Mine, Kentucky Power's 34.5 kV distribution facilities serve the Big Sandy Regional Airport, Beech Fork Mine #2 and the United States Penitentiary-Big Sandy.²⁰ The prison has 3.3 MW load, while the mine has a 2.5 MW load.²¹ Borden at 7.

Kentucky Power also has two transmission lines that run through or near the surface boundaries of the Matrix mine. The Beaver Creek-Dewey 138 kV transmission line runs north-south through the Matrix Mine tract. Wagner at 4. The line section was placed in service in 1967 as a part of Kentucky Power's Beaver Creek-Big Sandy 138

¹⁷ The location of the Kentucky Power facilities and their relationship and proximity to the Matrix Mine and the boundary between the certified territories of Kentucky Power and Big Sandy are illustrated on Exhibit EKW-1 to the prefiled testimony of Errol K. Wagner.

¹⁸ Wagner at 3; Kentucky Power Response to Hearing Data Request 2.

¹⁹ Wagner at 3; Kentucky Power Response to Hearing Data Request 2.

²⁰ Borden at 7-8; Kentucky Power Response to Hearing Data Request 2.

²¹ Like Big Sandy, Kentucky Power does not intend to serve the Matrix Mine through its existing distribution system. Wagner at 3. What distinguishes Kentucky Power from Big Sandy in this regard is that unlike Big Sandy, Kentucky Power has two transmission lines, one of which traverses the Matrix Mine, that can be used to serve the facility. Wagner at 3-5. In fact, whether service is provided by Kentucky Power or Big Sandy, it will be provided through Kentucky Power's Dewey-Inez 69 kV transmission line that runs approximately 1.6 miles north of the entrance to the Matrix Mine. Wagner at 3-4. Big Sandy's closest transmission line is 4-5 miles west of the mine entrance, and by Big Sandy's own admission, is not appropriate to serve the Matrix Mine. McKinney at 4.

kV transmission line. *Id.* The Dewey Station, located on the line north of the Matrix Mine, was placed in service in 1971. *Id.*

The Dewey-Inez 69 kV line runs east-west approximately 1.6 miles north of the Matrix Mine. Wagner at 3-4. It will supply power to the Matrix Mine without regard to which utility is authorized to serve the mine. Borden at 3. The Dewy-Inez 69 kV line section was built in 1976, although the Massey and Pevler stations, which are located on the line, were established in 1971. Wagner at 5. The Kentucky Power transmission system, including the Dewey-Inez 69 kV transmission line that will serve the facility, is adequate to serve the load. *Id.*

The Pevler Substation is located 2.1 miles northeast of the Matrix Mine mouth. T.H. at 66. Beginning in the early 1970's, the Pevler Substation was used to supply power to Island Creek and other coal company operations within the boundaries of the Matrix Mine. T.H. at 11-12. These operations worked coal seams other than the Alma seam to be mined by Matrix. *Id.* In addition, a line presently runs south from the Pevler Station to a metering point located just north of the surface boundaries of the Matrix Mine but within Kentucky Power's certified territory. T.H. at 34-35; 53. From there, five distribution lines constructed by Czar spread out across the surface boundaries of the property leased by Czar, including the Matrix Mine. T.H. at 35; 53-54. They service a coal preparation plant and several deep mines, all of which are within Kentucky Power's service territory. T.H. at 34-35. In addition, one of the lines provides power to pumps at a pond located within the boundaries of the Matrix Mine, approximately 0.8 miles from the mine entrance and within Kentucky Power's service territory. T.H. at 35-36; 54. In September and October, 2002 this line was extended to the mouth of the Matrix Mine.

T.H. at 12. Temporary service to the mine using the line began in November, 2002.

T.H. at 12-13.

Based upon further investigation following the commencement of this action, Matrix now proposes to receive permanent service to the Matrix Mine from the Pevler Substation. T.H. at 10, 33-34. The substation is graded and has a security fence and a gravel access road. T.H. at 10.

The Pevler Substation, except for three 69 kV switches and metering, was sold to Czar by Kentucky Power in 1995. T.H. at 34; Wagner at 6. Even after the sale of the substation, Kentucky Power continues to supply electricity to it. T.H. at 12.

D. The Proposed Plans of Service.

1. Big Sandy.

Big Sandy proposes to serve the Matrix Mine by having EKPC tap Kentucky Power's Dewey-Inez 69 kV line approximately 1.6 miles from the mouth of the Matrix Mine. McKinney at 2. A 1.6 mile transmission line would be constructed from the EKPC tap and end at a 69-12.5 kV, 5.6 MVA substation to be built near the mine entrance. McKinney at 2; Prefiled Testimony of David Estep ("Estep") at 2. The projected cost of the substation is \$172,000 while the transmission line will cost \$267,000. Estep at 2. Big Sandy proposed that Matrix reimburse Big Sandy for \$240,000 of these costs by paying \$4,000 a month for 60 months. *Id.* In addition, Matrix would be required to grant EKPC the necessary right of way and prepare the substation site to EKPC specifications. McKinney at 2. Beyond these costs, the tap of Kentucky Power's 69 kV Dewey-Inez line was estimated to cost \$332,000, plus the cost of a suitable site and access to be provided by EKPC. McKinney at 3. It will take up to

six months to construct the new interconnection point after an Interconnection Agreement is executed.²²

At Big Sandy's tariffed rates, the monthly charge for a 3 MW load will be \$59,631.75.²³ The monthly charge for a 5 MW load will be \$81,697.²⁴

2. Kentucky Power.

Kentucky Power can serve the Matrix Mine by tapping the Dewey-Inez line at the same point EKPC proposes to do so, or through the existing Pevler Substation.²⁵ If service is provided through the Dewey-Inez line at the location EKPC proposes to tap, Kentucky Power's costs for transmission and the substation at the tap point (but not the monthly charge) will be substantially the same as Big Sandy's. T.H. at 82.

Kentucky Power also can provide service to the Matrix Mine through the Pevler substation.²⁶ As explained by Mr. Horn:

A. ... What we have proposed to do there is come off the existing tap on the line going to the 69 [kV] to 12.47 [kV] transformer and set another transformer and go from 69 [kV] to 34.5 [kV] for the Matrix mine.

Q. Okay, and then do you build a new distribution line or new transmission line to the mine, or do you just take the existing one that's now operated at 12.47 [kV] and just operate it at 13.5 [kV]?

A. No, sir. We would have to construct some new line from the point where we took the new line over to Matrix from the old line....

²² Kentucky Power Response to Hearing Data Request 4.

²³ Matrix Response to Big Sandy Data Request 16; Big Sandy Response to Kentucky Power Data Request 17.

²⁴ Big Sandy Response to Hearing Data Request 1.

²⁵ T.H. at 69; Kentucky Power Response to Hearing Data Request 4.

²⁶ Kentucky Power Response to Hearing Data Request 4.

T.H. at 43-44.

If service is provided through the Pevler Substation as Matrix now proposes, the costs will be substantially less than providing service from the EKPC tap point. In lieu of the \$332,000 required to tap the Dewey-Inez 69 kV line, the cost of serving the projected 5-7 MW load from the Pevler 69 kV delivery point will be approximately \$154,000, or \$178,000 less than cost to provide service from the EKPC tap point.²⁷ In addition, providing service through the existing Pevler Substation avoids the costs associated with acquiring the substation site, access road and security fence.²⁸ Finally, use of the Pevler site will permit Matrix to use much of the existing infrastructure, including the 0.8 miles of recently built line as well as existing poles and insulators, in lieu of constructing, at a cost of \$267,000, the 1.6 miles of new transmission line required for the EKPC tap. T.H. at 13; Estep at 2. Indeed, even if 1.9 miles of new line must be built to utilize the Pevler substation, the cost will total \$140,448,²⁹ or 47.3% less than the \$267,000 originally projected for the 1.6 mile transmission line from the EKPC Tap. T.H. at 44, 45; Estep at 2. Finally, service can be provided through the Pevler Substation within four months or less after a Commission's decision and request by Matrix for service.³⁰

At Kentucky Power's tariffed rates, the monthly charge for a 3 MW load will be \$41,671.79.³¹ The monthly charge for a 5 MW load will be approximately \$69,453.12.³²

²⁷ *Id.* In addition, EKPC would be responsible for transmission charges. Big Sandy Response to Kentucky Power Data Request 10.

²⁸ T.H. 10, 12; Kentucky Power Response to Hearing Data Request 4.

²⁹ T.H. at 45. (\$14/foot * 10,032 feet [1.9 miles * 5,280 feet] = \$140,448.)

³⁰ Kentucky Power Response to Hearing Data Request 4.

³¹ Matrix Response to Big Sandy Data Request 16.

³² Matrix Response to Big Sandy Data Request 16; T.H. 113 (\$41,671.79 * [5/3] = \$69,453.12.).

Argument

KRS 278.018(1) provides that “[i]n the event a new electric consuming facility should locate in two or more adjacent certified territories, the commission shall determine which retail electric supplier shall serve said facility based on criteria in KRS 278.017(3).” Big Sandy and Kentucky Power agree that the Matrix Mine is a new electric consuming facility located in two adjacent certified territories.³³ Thus Matrix’ Application to be served by Kentucky Power is governed by KRS 278.217(3). *In the Matter of: Kenergy Corporation v. Kentucky Utilities Company*, Case No. 2002-00008 at 2 (Ky. P.S.C. October 18, 2002) (“*Kenergy*”). The criteria set out in KRS 278.217(3) are:

- (a) The proximity of the existing distribution lines to such certified territory;
- (b) Which supplier was first furnishing retail electric service, and the age of the existing facilities in the area;
- (c) The adequacy and dependability of existing distribution lines to provide high quality retail electric service at reasonable costs;
- (d) The elimination and prevention of duplication of electric lines and facilities supplying such territory.

³³ Big Sandy Response to Kentucky Power Data Request 8; Wagner at 8.

A. Kentucky Power's Distribution and Transmission Lines Are Located Closer To The Matrix Mine Than Those of Big Sandy and EKPC.

Kentucky Power's distribution system extends within the surface boundaries of the Matrix Mine and provides retail service to six customers in the southern portion of the Matrix Mine tract. Wagner at 2-3. In addition, Kentucky Power serves several large customers, including a coal mine, through its 34.5 kV distribution system located 2.5-3 miles north of the Matrix Mine. Borden at 7. Distribution lines constructed, owned and maintained by Czar and Matrix, including the line that currently provides temporary service to mine, are located within the boundaries of the Matrix Mine tract. T.H. 34-35; 53-54. Indeed, even before the extension now providing temporary service was constructed by Matrix in late 2002, the Czar facilities were providing service to pumps located within the surface boundaries of the Matrix Mine and located only 0.8 miles from the mine entrance. T.H. 12, 35-36, 54. Because Kentucky Power provides power to these facilities, it is not unreasonable to treat them as Kentucky Power facilities for the purpose of applying KRS 278.017(3)(a), particularly in light of the statute's purpose of "favor[ing] the utility whose cost to extend service will be less and to avoid duplication of facilities..."³⁴ and the fact that if service is provided through the Pevler Substation, 0.8 miles of existing distribution line, along with existing poles and insulators, will be used. See, T.H. at 13.

By contrast, Big Sandy's distribution facilities are located outside the boundaries of the Matrix Mine, with the terminus of the closest line situated approximately 4000 feet from the mine entrance. Daniel at 3. Moreover, in 2001 Big Sandy was unable to serve

³⁴ *Kenergy* at 5.

a mine, located approximately 6000 feet from the entrance to the Matrix Mine, using its second closest distribution line because that line was inadequate to do so. T.H. at 173

Commission precedent indicates that where the electric consuming facility will not be served at distribution voltages, the necessary inquiry under KRS 278.017(3)(a) is the proximity of the facilities that will serve the facility, even if they otherwise would be classified as transmission facilities. *Kenergy* at 3-4, 5. Here, the Matrix Mine will be served at 69 kV. See, *Estopp* at 2; T.H. at 43-44. The closest 69 kV line to the Matrix Mine is Kentucky Power's 69 kV Dewey-Inez line, which is located 1.6 miles from the Matrix Mine entrance.³⁵ *Wagner* at 3-4. Indeed, because of its proximity, EKPC on behalf of Big Sandy proposes to tap Kentucky Power's Dewey-Inez line if Big Sandy is permitted to serve the Matrix Mine. *McKinney* at 2.

Big Sandy does not own or control any transmission facilities, but instead typically receives transmission service from EKPC.³⁶ The closest EKPC transmission line is located approximately three times as far from the mine entrance as Kentucky Power's 69 kV line.³⁷ Big Sandy does not propose to use EKPC's Thelma-Magoffin County line because to do so would duplicate facilities and burden land owners. *McKinney* at 4; T.H. at 156-157.

The first criterion under KRS 278.217 unambiguously weighs in favor of Kentucky Power serving the Matrix Mine. Kentucky Power's distribution facilities, as well as its transmission line that actually will serve the Matrix Mine, are substantially closer to the mine than the corresponding Big Sandy/EKPC facilities.

³⁵ The Kentucky Power Beaver Creek-Dewey 138 kV transmission line actually crosses the surface of Matrix Mine and could be used to serve the Matrix Mine. *Wagner* at 4; *Borden* at 6-7. Because it is more economical to do so, Matrix elected to take service from the 69 kV line. *Borden* at 6-7.

³⁶ Big Sandy Response to Kentucky Power Data Request (2)(a).

³⁷ Big Sandy Response to Kentucky Power Data Request (2)(a), (2)(b).

B. Kentucky Power Was First Supplying Retail Electric Service In The Area.

Kentucky Power's distribution facilities in the area of the Matrix Mine, including those actually within the surface boundaries of the Matrix Mine, antedate Big Sandy's distribution facilities by at least four years.³⁸ In addition, Kentucky Power has been providing electrical service to other coal mining operations located within the boundaries of the Czar property, which includes the Matrix Mine, since the early 1970's. T.H. at 11-12, 35.

To the extent *Kenergy* focuses the relevant inquiry under KRS 278.017(3)(b) on the facilities that actually can serve the Matrix Mine, Kentucky Power's Dewey-Inez line was built in 1976, fourteen years prior to the EKPC's Thelma-Magoffin County line.³⁹ In addition, the Beaver Creek-Dewey 138 kV line, which also is capable of serving the Matrix Mine, predates EKPC's Thelma-Magoffin County line by 23 years.⁴⁰

KRS 278.217(3)(b) clearly weighs in favor of Kentucky Power serving the Matrix Mine.

C. Kentucky Power Can Provide Adequate Service To The Matrix Mine At A More Reasonable Cost Than Can Big Sandy.

KRS 278.017(2)(c) considers both the adequacy and dependability of existing facilities to provide service, as well as the cost of doing so. Commission precedent instructs that costs include both the cost of the extension and the rates paid for electricity. See, T.H. at 46-47.

³⁸ Wagner at 3; Kentucky Power Response to Hearing Data Request 2; Big Sandy Response to Kentucky Power Data Request (2)(a), (2)(b).

³⁹ Wagner at 5; Big Sandy Response to Kentucky Power Data Request (2)(a), (2)(b).

⁴⁰ Wagner at 4; Big Sandy Response to Kentucky Power Data Request (2)(a), (2)(b).

1. Kentucky Power's Facilities Can Provide Adequate and Dependable Electric Service To The Matrix Mine.

It is undisputed that Kentucky Power's transmission facilities are adequate to provide electrical service to the Matrix Mine. Wagner at 5. In fact, Big Sandy proposes to use Kentucky Power's facilities, and not those of EKPC, if it is permitted to serve the mine. McKinney at 2. The record is at best unclear as to whether EKPC's 69 kV Thelma-Magoffin County line could serve the Matrix Mine, as it appears the line was rejected for other reasons before the question of its adequacy was addressed. See, McKinney at 4.

2. Kentucky Power's Cost of Providing Service To The Matrix Mine Is Significantly Less Than Big Sandy's Cost.

If Kentucky Power were to provide service from the location of EKPC's proposed tap of the Dewey-Inez line, its costs, if Big Sandy uses the metering at the transmission delivery (tap) point to bill Matrix, would be similar to Big Sandy's.⁴¹ T.H at 82; Wagner at 9. If Big Sandy establishes a separate meter for billing Matrix, Big Sandy's costs presumably would be somewhat higher because of the additional metering.

Matrix, however, is not proposing to take service from EKPC's planned tap of Kentucky Power's 69 kV line. T.H at 9-10. Instead, service would be obtained through the existing Pevler Substation, which is served by Kentucky Power. T.H. at 9-10, 12. Under such a scenario, the cost of the extension would be substantially less than the cost incurred if service is provided by Big Sandy. In particular,

- Because the existing tap will be used, the \$332,000 cost of tapping Kentucky Power's Dewey-Inez line will be avoided. Although service through the Pevler Substation will require an upgrade of its facilities, the

⁴¹ Even if this proceeding were limited to considering service from the proposed EKPC tap of the Dewey-Inez line, and it is not, the other statutory factors strongly favor service by Kentucky Power.

\$154,000 cost of doing so is \$178,000 (54%) less than the cost of the new tap.⁴²

- The costs of acquiring and grading the substation site, as well as the expense required to build the access road and security fencing will be avoided.⁴³
- 0.8 miles of the existing Matrix temporary service distribution line can be used, as well as poles and conductors, in lieu of constructing a new 1.6 mile transmission line.⁴⁴ As a result, the total cost of constructing the distribution line from the Pevler Substation to the mine entrance, including rebuilding the 1.9 mile section from the substation to the pumps, will be \$126,552 (47.3%) less than the \$267,000 projected cost of building the new 1.6 mile line from the EKPC tap to the mine entrance. T.H. at 44, 45; Estep at 2.

The monthly cost of electrical service by Kentucky Power also is markedly below that of Big Sandy. For a 3 MW load the monthly cost differential is \$17,959.96,⁴⁵ while Kentucky Power's monthly service cost for a 5 MW load is \$12,243.88⁴⁶ less than Big Sandy's cost. Thus, if Kentucky Power is authorized to provide service in lieu of Big Sandy, Matrix should realize \$215,519.52 (12 * \$17,959.96) in annual savings for a 3 MW load, and \$146,926.56 (12 * \$12,243.88) in savings annually for a 5 MW load.⁴⁷

Significantly, KRS 278.017(3)(c), which directs the Commission to consider the cost of service in deciding which of the adjacent retail electric suppliers is to serve the new electric consuming facility, is applicable to investor owned utilities and rural electric cooperatives alike. See, KRS 278.017(3)(c). Certainly, the statute does not permit the

⁴² Kentucky Power Response to Hearing Data Request 4.

⁴³ T.H. at 10, 12; Kentucky Power Response to Hearing Data Request 4.

⁴⁴ T.H. at 13; Estep at 2.

⁴⁵ Matrix Response to Big Sandy Data Request 16; Big Sandy Response to Kentucky Power Data Request 17; (\$59,631.75 - \$41,671.79 = \$17,959.96).

⁴⁶ Big Sandy Response to Hearing Data Request 1; Matrix Response to Big Sandy Data Request 16; T.H. at 13 (\$81,697 - \$69,453.12 = \$12,243.88).

⁴⁷ This difference in the cost of service, combined with additional infrastructure costs required to serve the Matrix Mine from the proposed EKPC tap of the Dewey-Inez 69 kV line, makes Big Sandy's cost of service unreasonable.

Commission to ignore Big Sandy's higher costs of service because it is a rural electric cooperative or the nature of the territory it serves. *Commonwealth v. Allen*, Ky., 980 S.W.2d 278 (1998) ("If the legislature had intended to create an exception ..., it could have explicitly done so"); *Owens-Illinois Labels, Inc. v. Commonwealth*, Ky. App., 27 S.W.3d 798, 803 (2000) ("the plain meaning of a statute cannot be ignored by the courts simply because another interpretation might be considered to state a better policy.") Nor would it be appropriate to do so here, even if permissible, in light of the rugged terrain and difficult service conditions found throughout much of Kentucky Power's service territory.

Finally, Kentucky Power can provide service through the Pevler Substation up to two months sooner than Big Sandy will be able to provide service from the EKPC tap.⁴⁸

In sum, because Kentucky Power can render adequate and dependable service for significantly less than Big Sandy, and do it more quickly, KRS 278.017(3)(c) favors authorizing Kentucky Power to serve the Matrix Mine.

D. Service By Kentucky Power Will Protect Against Duplication of Facilities Supplying The Matrix Mine.

Service by Kentucky Power through the Pevler Substation eliminates the need to duplicate the existing Pevler tap by building a new tap of the Dewey-Inez line, as would be required if Big Sandy provides service. T.H. at 10, 12, 43-44. Instead, the existing Pevler tap will be used and the substation upgrade, with its attendant savings.⁴⁹ In addition, the provision of service through the Pevler Substation will permit Matrix to use the existing 0.8 miles of distribution line that was built to provide temporary service to

⁴⁸ Kentucky Power Response to Hearing Data Request 4.

⁴⁹ T.H. at 10, 12, 43-44; Kentucky Power Response to Hearing Data Request 4.

the mine, as well as the poles and conductors on the 1.9 miles of line between the Pevler metering point and new distribution line. T.H. at 13, 42; Estepp at 2. As a result, if Big Sandy provides service, the Czar distribution facilities will be duplicated, and the 0.8 miles of new distribution line rendered useless, by the construction of 1.6 miles of new kV transmission line from the tap to the mouth of the Matrix Mine.

Because the Dewey-Inez line is in Kentucky Power's service territory, the Commission's decision in *Kenergy* suggests that the proper comparison is between 5 mile transmission line required if EKPC taps EKPC's Thelma-Magoffin County 69 kV line and rebuilding the existing Czar line between the metering point and the new 0.8 mile distribution line. *Kenergy* at 5-6. If so, this tips the scale further in favor of Kentucky Power. In fact, Big Sandy itself recognizes it makes little sense to provide service from EKPC's transmission line:

Q. Why was it decided to obtain transmission from AEP?

A. The transmission tap from [the] EKPC 69 kV system would be in the 4-5 mile range depending on routing. EKPC and Big Sandy did not want to burden private property owners with this facility to serve only one customer for a period of 8-10 year. EKPC did not want to duplicate facilities. AEP had a 69 kV line and a 138 kV line on the Beechfork property capable of serving this load....

McKinney at 4.

Service by Big Sandy also will result in duplication of certain of Czar's existing Pevler substation facilities, including the site, fencing and access road. T.H. at 10, 13. Moreover, even if Kentucky Power were to serve Matrix from EKPC's proposed tap of the Dewey-Inez line instead of the Pevler Substation, and that does not appear to be either likely or appropriate, there will be duplication of metering facilities unless Big

Sandy uses the metering at the transmission tap to bill Matrix. Wagner at 9; T.H. at 82.

As did the other three, the fourth criterion under KRS 278.017(3) tilts strongly in favor of Kentucky Power being authorized to serve the Matrix Mine.

E. Commission Precedent Supports Authorizing Kentucky Power To Serve The Matrix Mine.

“On all fours” with this case is the Commission’s recent decision in *In the Matter of: Kenergy Corporation v. Kentucky Utilities Company*, Case No. 2002-00008 (Ky. P.S.C. October 18, 2002). There, Kentucky Utilities Company (“KU”) sought authority to serve a coal mining facility that was located in its service territory and the adjacent service territory of Kenergy Corporation (“Kenergy Corp.”). *Kenergy* at 1. Like this proceeding, the mine portal was located in the certified territory of the supplier not favored by the customer – Kenergy Corp. Like this case, service could be provided in a more cost-effective manner, and duplication avoided, if the customer’s favored supplier, Kentucky Utilities, were authorized to serve the mine. Likewise, as in this case, the favored supplier’s facilities of the kind that actually would be used to supply the mine were closer to the customer’s facility. Unlike this case, however, where 75% of the reserves are located in the customer-favored supplier’s territory, and energy usage in the customer-favored supplier’s territory outstrips that in the non-favored supplier’s territory by 3 to 1, 98% of the then currently permitted reserves were located in the service territory of Kenergy Corp. *Kenergy* at 2.

Weighing these factors, as it is obligated to do under KRS 278.217(3), the Commission concluded that KU, not Kenergy Corp., should be authorized to serve the mine. The Commission’s decision to authorize KU is particularly significant to this case in light of the fact that 98% of the permitted reserves were in Kenergy Corp.’s certified

territory. Here, of course, the reverse is true, with approximately 75% of the reserves in Kentucky Power's territory.⁵⁰ Horn at 3

In reaching its decision, the Commission found two of the factors to be particularly important under the facts presented: proximity of lines that will be used to serve the facility, and avoidance of duplication and hence unnecessary cost. *Kenergy* at 5-6. Here, both factors strongly favor Kentucky Power. The EKPC transmission line is located more than five miles away, and even EKPC concedes it is not an adequate alternative. McKinney at 4. By contrast, Kentucky Power can serve the Matrix Mine through the existing Pevler Substation with significantly less duplication and hence lower infrastructure costs. Moreover, Kentucky Power's cost of service will save Matrix at least \$1 million over a seven year period.⁵¹ Indeed, service by Kentucky Power presents an even more compelling case than K.U.'s in *Kenergy* because the remaining factors, which apparently were a "wash" in *Kenergy*, strongly favor Kentucky Power.

Under KRS 278.217(3) and KRS 278.018(1), Kentucky Power is entitled to serve the Matrix Mine.

F. Kentucky Power Did Not Violate KRS 278.016 *Et Seq.*

Big Sandy seeks to portray Kentucky Power as a scofflaw, flagrantly violating Kentucky's certified territory statutes. See, e.g., Response of Big Sandy Electric Cooperative Corporation at ¶¶ 10, 14 ("willful trespass"). The evidence is to the contrary. Indeed, even its former President and General Manager admitted on cross-

⁵⁰ Indeed, this fact alone makes it clear that an order permitting Kentucky Power to serve the Matrix Mine is far from the "land grab" by Kentucky Power Big Sandy seeks to portray.

⁵¹ Kentucky Power Response to Hearing Data Request 4.

examination:

Q. Is it your judgment that Kentucky Power violated the Territorial Boundary Act?

A. No. I don't think they were aware of them building that line over there, I don't think, at that date.

Q. All right so, you don't think Kentucky Power violated the Territorial Boundary Act?

A. I don't think they knew of it. No, I don't think they violated it.

T.H. at 119, 142. In fact, the record makes clear that not only has Kentucky Power not violated the certified territory statutes, as Mr. Davis candidly testified, but it has acted properly throughout the events giving rise to this proceeding.

Specifically, the uncontroverted record reveals:

- Kentucky Power took no action to extend the Czar distribution line from the pumps to the Matrix Mine entrance. Borden at 4 ("The only action taken by AEP was to sign the letter from Big Sandy RECC and return it to Big Sandy RECC.")
- The extension was constructed by a contractor retained by Czar/Matrix/Beech Fork. T.H. at 19-20.
- Kentucky Power did not realize until the August, 2003 informal conference that Big Sandy disputed the applicability of the September, 2001 consent letter to the Matrix Mine. Borden at 5.
- Immediately after learning that the letter it was relying upon as Big Sandy's consent might not apply to the Matrix Mine, Kentucky Power took steps to install a meter on the Matrix Mine distribution line.⁵² *Id.*
- The discrepancies between the date of service and location of the mine set out in the Big Sandy letter and the date service actually

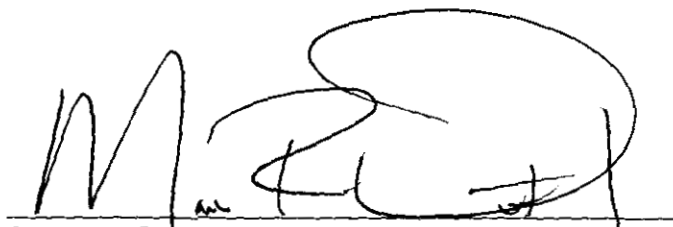
⁵² Kentucky Power's alternative was to cease service to the Pevler Station, thereby disrupting service not only to the Matrix Mine, but the other facilities within Kentucky Power's service territory. Big Sandy never has suggested that such a course of action was required or even appropriate. In fact, despite its allegations it is ready, willing and able to serve the Matrix Mine, at no time during the pendency of these proceedings has it had the facilities to do so.

began, and the location of the Matrix Mine, were not so extraordinary or otherwise inconsistent with Kentucky Power's experience as to alert it that Big Sandy might claim the letter did not pertain to the Matrix Mine. *Id.*

Even if Kentucky Power violated the certified territory statutes, and it did not, any such violation would be a technical one at most, particularly in light of the fact that KRS 278.018(1) requires that Kentucky Power be awarded the right to serve the entire Matrix Mine.

Conclusion

For the reasons set forth hereinabove, Kentucky Power Company d/b/a American Electric Power respectfully requests that it be authorized pursuant to KRS 278.018(1) to provide service to the Matrix Mine located in Johnson, Floyd and Martin Counties, Kentucky.

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', is written over a horizontal line.

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COUNSEL FOR RESPONDENT, KENTUCKY
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ELECTRIC POWER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 23rd day of December, 2003 upon:

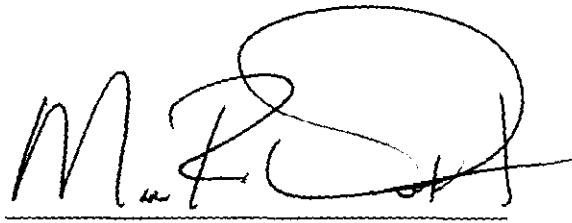
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Mark R. Overstreet

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